File No. 18,968. Term No. 180

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

STATE OF MISSOURI AT THE RELATION OF WILLIAM PRESTON HILL, Plaintiff in Error,

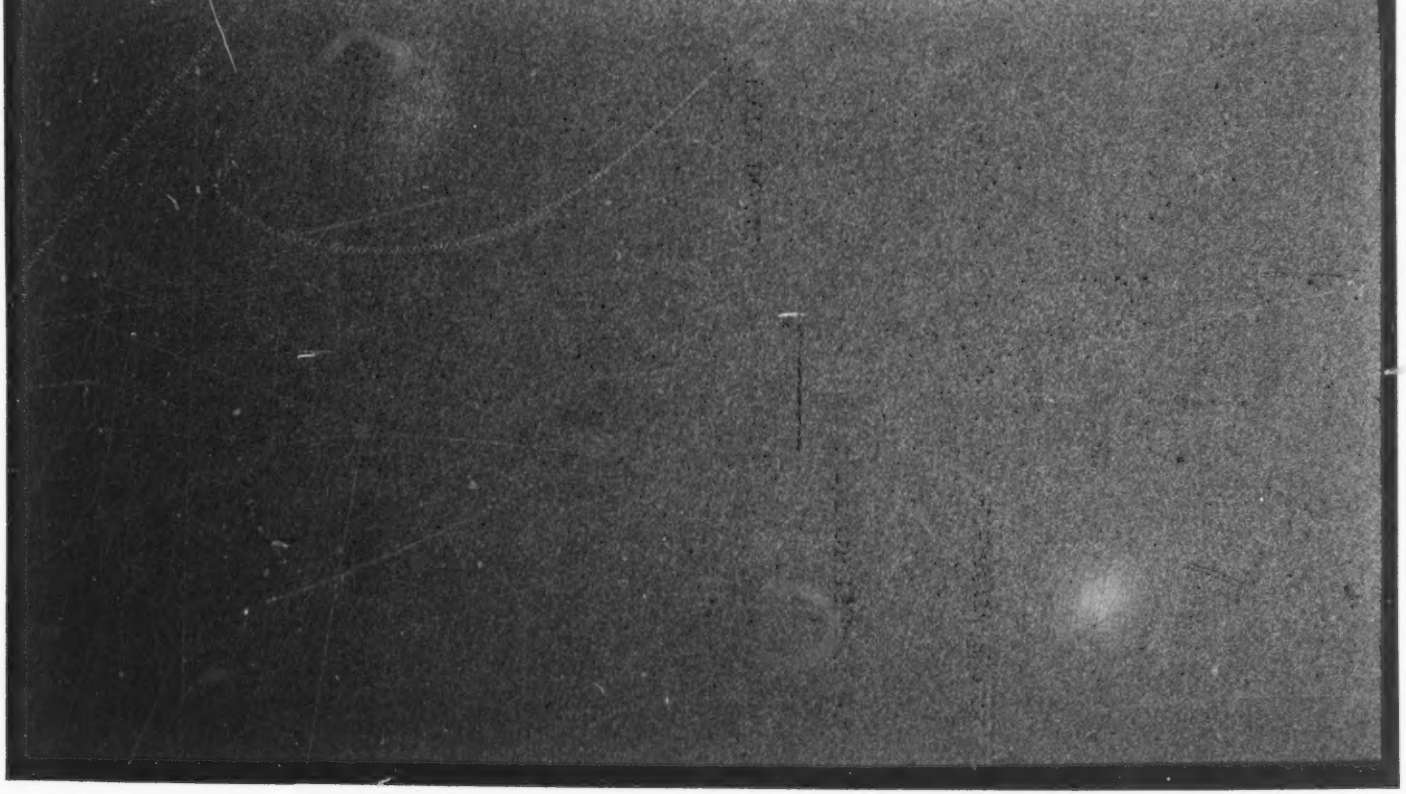
vs.

ALEXANDER M. DOCKERY, SAM B. COOK, R. P. WILLIAMS, ALBERT O. ALLEN, EDWARD C. CROW, AND THE STATE BOARD OF EQUALIZATION, Defendants in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

Statement and Brief of Defendants in Error.

EDWARD C. CROW, Attorney-General of Missouri,
BRUCE BARNETT,
For Defendants in Error.



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File No. 18,768. Term No. 180.

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Statement and Brief of Defendants in Error.

STATEMENT.

This is a mandamus proceeding, which originated in the Supreme Court of Missouri. It is alleged in relator's petition and in the alternative writ of mandamus that respondents constitute the State board of equalization of Missouri. This is a body created by the State Constitution and charged by the statutes with the duty of assessing, for purposes of taxation, the franchises and other intangible property

of those quasi public corporations which is not required to be assessed by the county assessors. The writ sets forth that this body in the discharge of its duties in making such assessments, placed valuations upon the property of such certain corporations at from twenty-five to forty-eight per cent. of their actual value, when under the law such property should have been assessed at full and actual value and calls upon respondents to show reason why a permanent writ of mandamus should not issue to compel them to assess such property at its full value. The corporations, upon whose property too low a valuation is alleged to have placed, are railroad, telephone, telegraph and ferry companies, and it is alleged that no assessment whatever has been made upon the property of certain express companies.

The assessments are referred to in relator's pleading as "pretended assessments," but there is no allegation that the action of the board was actuated by fraud or improper motive.

Relator sues as a citizen of the State and an owner of property, whose taxes are alleged to have been necessarily increased by virtue of such alleged undervaluations.

The Court sustained a motion to quash the alternative writ at the instance of respondents, and relator, by writ of error, brings the cause to this Court.

Respondents contend that the alternative writ states no facts which would entitle relator to the relief sought, for the reason that the actions of the State board of equalization are not subject to review by the courts, their duties being of a quasi judicial nature and involving the exercise of discretion. Action has been taken by respondents in the matter of assessing the intangible property of all the corporations mentioned in the petition and writ, except that of express compnaies, which it is not their duty to assess under the laws of Missouri, as set forth in our brief.

BRIEF.

I.

The State board of equalization of Missouri, of which the respondents or defendants in error are the members, as appears upon the face of the petition and alternative writ of mandamus in this case, is a body which exists and acts under the following section of the Missouri Constitution:

"There shall be a State board of equalization, consisting of the Governor, State Auditor, State Treasurer, Secretary of State and Attorney-General. The duty of said board shall be to adjust and equalize the valuation of real and personal property among the several counties in the State, and it shall perform such other duties as are or may be prescribed by law."

Constitution of Missouri, article X, section 18.

By an Act of March 9, 1901, it was enacted by the Legislature of this State as follows:

"An act to provide for the assessment and taxation of franchises.

"Be it enacted by the General Assembly of the State of Missouri, as follows:

"Section 1. The franchises (other than the right to be a corporation) of all railroad, street railroad, bridge, telegraph, telephone, conduit, water, electric light and gas companies, and all other similar corporations owning, operating and managing public utilities, and of all quasi public corporations possessing special and peculiar privileges and authorized by law to perform any public service (except corporations formed for religious, educational and benevolent purposes) shall be assessed for the purposes of taxation at the same time and in the same manner as other property of such corporation is now or may hereafter be required to be assessed; and there shall be levied upon the assessed value of such franchise the same rate of taxation as may be levied upon other property of such corporation. Said tax shall be due and payable and like proceedings may be had to collect the same, and when collected it shall be disposed of in the same way as the taxes imposed upon the other property of such corporations.

"Sec. 2. The State board of equalization in cases of railroads, street railroads, bridges, telegraph, telephone companies and all other corporations whose property the State board of equalization is now or may hereafter be required to assess, and the county assessor, in case of the other quasi public corporations referred to in the preceding section, shall ascertain, fix and determine the total value for taxable purposes of the entire property of such corporations, tangible and intangible, in this State, and shall then assess the tangible property and deduct the amount of such assessment from the total valuation and enter the remainder upon the assessment list or in the assessor's books, under the head of "all other property."

"Sec. 3. There being no statute now in force expressly directing the assessment and taxation of the franchises of the corporations specified in this act, an emergency exists, and this act shall take effect and be in force from and after its passage."

Session Acts, 1901, p. 232.

II.

Respondents, as such State board of equalization, constitute a judicial body vested with discretionary powers, and there being no provision made by statute for appeal from their decisions, their jurisdiction in the matter of assessing property is exclusive, and no act of this body in such connection is subject to review by any Court.

Hagar vs. Reclamation District No. 108, 11 U. S., 701.

(Local citation, 710.)

Manchester vs. Furnald, 71 N. H., 153.

(Local citation, 157.)

State ex rel Gottlieb vs. Western Union Telegraph Co., 165 Mo., 502.

National Bank vs. Kimball, 103 U. S., 732.

Stanley vs. Supervisors, 121 U. S., 535.

III.

It appears from the face of the petition and the alternative writ that respondents have taken action in the premises; their discretion has been exercised. Relator seeks by mandamus not merely to compel this quasi judicial body to act, but to compel a revision of the finding of said body, that they may arrive at a different result. For the Court to exercise such a power would be to overturn the action

of the board in placing valuation upon the property and to compel it to arrive at a finding contrary to the judgment and discretion of the members.

Mandamus will not lie for such a purpose. This remedy is effective to require such a body to take action, but cannot be used to direct the course which it must pursue or the result which it must reach in the exercise of its discretion. And as the alternative writ shows upon its face that action has already been taken in the premises, respondents have already done all the Court could require them to do by mandamus.

The fact that no provision is made for appeal for writ of error in this case does not justify the Court in undertaking to review the finding in a mandamus proceeding.

In re Rice, 155 U. S., 396.

IV.

This case does not come within any of the exceptions to the above stated rule, there being no allegation in the petition or alternative writ that respondents combined or conspired to discriminate in favor of or against any party or parties in making the assessments, or that they adopted any fixed rule of procedure which established an unlawful manner of arriving at their results, or that the assessments in question have been placed at so insignificant a figure as to amount to no assessments at all.

Cases cited under Point II, supra.

This case is in no respect similar to that of State Board of Equalization et al. vs. People ex rel. Goggin, decided by the Supreme Court of Illinois and reported in 61 North Eastern Reporter, at page 339. In that case the Court held that the board could be forced by mandamus to assess in the manner provided by law the capital stock, including franchises of a number of corporations. The petition in that case alleged, and the evidence showed, that the board had refused to value and assess the capital stock, including franchises, upon a basis of the cash value thereof, but intended to value and assess same in such manner as to cause said corporations and each of them to pay no capital stock tax whatever. The Court recognized the doctrine that the finding of the State Board of Equalization on the question of values was not subject to review by the Courts, but that the board had failed and refused to assess certain property of some of these corporations, and had placed the valuation and assessment of others

at so low a figure as to show upon the face of the proceeding a fraudulent intent. This view of the Court that the amount of the assessment of itself showed fraud was based upon the fact that of the seven corporations which were assessed at some amount the People's Gas Light and Coal Co., which was one, was assessed at only $450,000, when by a statement of said company, signed by its secretary and filed with the auditor, it appeared that the amount at which it should have been assessed was $9,428,403; or, in other words, that the board had assessed the property of this company at less than five per cent. of the amount at which it should have been assessed, as shown by the company's own statement. Facts of this kind, together with the fact that a number of the companies had not been assessed at all are assigned by the Court as sufficient to show upon the face of the proceeding a fraudulent intent on the part of the board.

The decision is not based upon the ground that the Court could review the finding of the Board of Equalization, but upon the fact that no action whatever had been taken by that board in the matter of the assessment of the property of some of the corporations in question, and that the assessment of the property of the other seven corporations was so insignificant that it was not to be regarded by the Court as any assessment whatever.

In the case at bar there is no allegation in the petition or writ that the board has made its assessment at so low a figure as to amount to no assessment whatever, and there are no substantial allegations of fraud.

V.

Relator's petition and the alternative writ allege that respondents refused to make any assessment upon certain express companies.

It is not the duty of this body to make any such assessment, it being provided by a statute of the State that in lieu of taxes upon intangible property, express companies, shall pay into the State treasury one and one-fourth per cent. of their gross receipts.

Revised Statutes of Missouri for 1899, Sec. 9400.

(Vol. II, p. 2184.)

This statute has been declared constitutional, and upheld by this Court.

Pacific Express Company vs. Seibert, 142 U. S., 339.

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We respectfully submit that the action of the State board of equalization in making the assessments in question is not subject to review by the Courts; that if it were subject to such review, mandamus would not be an appropriate remedy; that, therefore, the Court committed no error in sustaining the motion of respondents to quash the alternative writ of mandamus, and the judgment should be affirmed.

EDWARD C. CROW, Attorney-General of Missouri,
BRUCE BARNETT,
For Defendants in Error.